

SERVICE DATE – JULY 10, 2006

SURFACE TRANSPORTATION BOARD

NOTICE

STB Ex Parte No. 575

REVIEW OF RAIL ACCESS AND COMPETITION ISSUES  
RENEWED PETITION OF THE WESTERN COAL TRAFFIC LEAGUE

MOTION FOR PROTECTIVE ORDER

Decided: July 7, 2006

By decision served on June 2, 2006, the Board announced that it will be holding a public hearing on July 27, 2006, and directed each potential participant to file a notice of intent to participate by July 6, 2006, and a written summary of his/her presentation by July 13, 2006.

By motion filed on June 30, 2006, the Reading Blue Mountain and Northern Railroad Company (RBMN) has given notice of its intent to participate and has requested the entry of a protective order. RBMN asks the Board to enter a protective order allowing the participants to submit (1) a redacted version of testimony that will afterwards become a part of the public record and (2) an unredacted version that may contain confidential information filed pursuant to 49 CFR 1104.14 and that will be subject to review only by the Board and outside lawyers and consultants who execute “an appropriate undertaking.” RBMN did not submit a proposed protective order.

On July 6, 2006, the Norfolk Southern Corporation (NS) filed a reply to RBMN’s request for a protective order, asking the Board to explicitly grant NS access to any confidential information that RBMN may file pursuant to any protective order issued by the Board. NS states that the confidential information that RBMN is likely to file will include documents that are relevant to an unrelated proceeding involving RBMN’s purchase of track from Conrail in a transaction the obligations under which have been assumed by NS. Thus, according to NS, the information that RBMN is likely to file will not be confidential as to NS, and the Board should explicitly grant NS access to such information.

Good cause exists to grant RBMN’s motion for a protective order, and it will be granted. The written summaries to be submitted in this proceeding may involve confidential information. RBMN’s motion conforms with the Board’s rules at 49 CFR 1104.14 and is similar to a motion for protective order granted recently involving a hearing in Rail Fuel Surcharges – Motion for Protective Order, STB Ex Parte No. 661 (STB served June 8, 2006). Issuance of a protective order will ensure that confidential information will be used solely for the instant proceeding and

not for other purposes. Because RBMN has not submitted a proposed protective order, a protective order similar to the one adopted in STB Ex Parte No. 661 will be imposed here.

NS's request that the Board grant it explicit access to any confidential information filed by RBMN will be denied. The protective order attached to this decision is broad enough to deal with NS's concerns. That carrier's outside counsel will have the opportunity to view any confidential information that may be filed by RBMN under the protective order simply by complying with its terms. Thus, it is not necessary for the Board to make explicit provision for NS to view confidential information submitted by RBMN.

It is ordered:

1. The protective order and undertaking in the Appendix to this decision are adopted.
2. NS's request that the Board grant that carrier explicit access to any confidential information filed by RBMN is denied, without prejudice to NS's outside counsel's ability to obtain access to confidential information under the protective order attached to this decision.
3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

## **APPENDIX**

### **PROTECTIVE ORDER**

1. For the purposes of this Protective Order, “confidential information” means the terms of “paper barriers” that are part of confidential commercial agreements and the identification of shippers, routes and rates for any movements.

2. The confidential information shall be used for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or other competitive purpose.

3. The confidential information shall not be disclosed in any way or to any person without the written consent of the parties to which the information pertains or an order of the Board. Such disclosure shall be limited to outside counsel or consultants of parties to these proceedings, solely for use in connection with this and any related Board proceedings, or any judicial review proceeding arising therefrom. Before such disclosure, such outside counsel or consultant must be given and read a copy of this Protective Order and agree to be bound by its terms by signing the attached Undertaking prior to receiving access to the confidential information.

4. Any documents containing the confidential information in the possession of parties other than the parties to which the information pertains, and their respective counsel, must be destroyed, and notices of such destruction must be served on the Board at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.

5. If the confidential information is retained by the Board, it shall, in order to be kept confidential, be treated in accordance with the procedure set forth at 49 CFR 1104.14.

6. All parties seeking to file confidential information pursuant to this order must observe the segregation requirements of 49 CFR 1104.14(a) and must simultaneously file a public version of any confidential submission.

7. If any party intends to use the confidential information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any documents setting forth or revealing such confidential information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such confidential information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such confidential information in accordance with this Protective Order.

8. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

**Exhibit A****UNDERTAKING – CONFIDENTIAL MATERIAL**

I, \_\_\_\_\_, am [outside counsel or consultant] for \_\_\_\_\_, have read the Protective Order governing the filing of confidential information by participants in STB Ex Parte No. 575 and understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any information learned as a result of receiving such information, for any purpose other than the preparation and preservation of evidence and argument in STB Ex Parte No. 575 or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any information obtained under this Protective Order to any person who is not also bound by the terms of this order and who has not executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that the parties to which the confidential information pertains shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: \_\_\_\_\_

Affiliation: \_\_\_\_\_

Dated: \_\_\_\_\_